

§ 1017.4

from unauthorized dissemination under section 148 of the Atomic Energy Act—

(1) Which concerns atomic energy defense programs;

(2) Which pertains to—

(i) The design of production facilities or utilization facilities;

(ii) Security measures (including security plans, procedures, and equipment) for the physical protection of—

(A) Production or utilization facilities;

(B) Nuclear material contained in such facilities; or

(C) Nuclear material in transit; or

(iii) The design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Assistant Secretary for Defense Programs (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act; and

(3) Whose unauthorized dissemination, as determined by a Controlling Official, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

§ 1017.4 Policy.

It is the policy of the DOE to make information publicly available to the fullest extent possible. These regulations shall be interpreted and implemented so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, consistent with the requirement in section 148 of the Atomic Energy Act to prohibit the unauthorized dissemination of UCNI. For example—

(a) Although UCNI is not subject to disclosure under the Freedom of Information Act (FOIA), documents or material containing both UCNI and other information which is not UCNI shall

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have the portions of the document or material not containing UCNI released to the maximum possible extent in response to a request made under the FOIA, subject to other exemptions of the FOIA; and

(b) To the fullest extent possible, the fundamental DOE policy of full disclosure of documents prepared under the National Environmental Policy Act (NEPA) and its implementing regulations will be followed. In some cases, this will mean that UCNI may be excised from documents to be made publicly available and prepared as an appendix, or otherwise segregated so as to allow the release of the nonsensitive portions of a document.

§ 1017.5 Prohibitions.

Government information shall not be controlled as UCNI in order to—

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person or organization;

(c) Restrain competition; or

(d) Prevent or delay the release of any information that does not properly qualify as UCNI.

§ 1017.6 Exemptions.

(a) Information exempt from these regulations includes—

(1) Information that is not government information;

(2) Information that concerns activities, facilities, or equipment outside the scope of atomic energy defense programs;

(3) Information that is classified as Restricted Data, Formerly Restricted Data, or National Security Information, or that is protected from disclosure under section 147 of the Atomic Energy Act (42 U.S.C. 2167);

(4) Basic scientific information (i.e., information resulting from research directed toward increasing fundamental scientific knowledge or understanding rather than any practical application of that knowledge);

(5) Applied scientific information (i.e., information resulting from research whose objective is to gain knowledge or understanding necessary for determining the means by which a specific need may be met) but not including that pertaining to:

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(i) The design of production facilities or utilization facilities;

(ii) Security measures (including security plans, procedures, and equipment) for the physical protection of:

(A) Production or utilization facilities,

(B) Nuclear material contained in such facilities, or

(C) Nuclear material in transit; or

(iii) The design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act;

(6) Safety information used to protect employees from occupational hazards, except for government information that reveals an exploitable vulnerability or design element that is UCNI;

(7) Radiation exposure data and all other personal health information;

(8) Information pertaining to the public health and safety and to the protection of the environment, except for government information that reveals an exploitable vulnerability or design element that is UCNI;

(9) Information concerning the transportation of low level or commercially generated radioactive waste; and

(10) Waste Isolation Pilot Plant (WIPP) information, except for government information that deals with safeguards or physical security for the WIPP project.

(b) Documents exempt from these regulations include—

(1) Documents prepared under Council on Environmental Quality regulations or DOE guidelines complying with the National Environmental Policy Act, except those portions of a document revealing an exploitable vulnerability or design element that is UCNI;

(2) Documents or material that a Reviewing Official determines to have been widely disseminated in the public domain (e.g., to a public library or a university library); and

(3) For documents which contain UCNI, any reasonably segregable portions of documents which do not con-

tain UCNI or which contain information otherwise exempt from disclosure.

§ 1017.7 Identification of unclassified controlled nuclear information.

(a) *Authorities*—(1) *Controlling Officials*. A Controlling Official having cognizance over certain government information is authorized to make a determination that the government information is or is not UCNI. A Controlling Official with overall cognizance over UCNI under consideration for decontrol is authorized to make a determination that the information is no longer UCNI. Each Controlling Official having cognizance over UCNI under consideration for decontrol shall concur in the determination to decontrol the UCNI prior to the UCNI being decontrolled.

(2) *Designation*. The Secretary may designate the Deputy Secretary, the Under Secretary, a Secretarial Officer of the DOE, or a Manager of a DOE Operations Office to be a Controlling Official for government information within his or her cognizance. The Controlling Official may redelegate his or her authority in accordance with the redelegation provisions in the designation of authority from the Secretary.

(3) Controlling Officials shall exercise their authorities in strict compliance with the rules, prohibitions, and exemptions described in these regulations.

(b) *Criteria*. Prior to a specific type of information being identified and controlled as UCNI, a Controlling Official shall insure that the information under review meets each of the following criteria:

(1) The information is government information.

(2) The information is limited to information concerning atomic energy defense programs.

(3) The information is within the scope of at least one of the three categories of UCNI in § 1017.8.

(4) Unauthorized dissemination of the information under review meets the adverse effect test in § 1017.9.

(5) The information is the minimum amount of information necessary to be controlled to protect the health and safety of the public or the common defense and security.